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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/796,166 | 03/10/2004 | Johan Thevelein | Q80427 | 3449 |
| 23373 | 7590 | 06/16/2006 | EXAMINER | |
| SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037 | | | JOIKE, MICHELE K | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1636 | |

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/796,166 | THEVELEIN ET AL. | |
| | Examiner | Art Unit | |
| | Michele K. Joiike, Ph.D. | 1636 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,10,12,14-23,38 and 40-62 is/are pending in the application.
- 4a) Of the above claim(s) 15-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9,10,12,14, 38 and 40-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>20060607</u> . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>03/10/04</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Election/Restrictions

Applicant's election of Group I in the reply filed on May 5, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 15-23 are withdrawn from consideration, claims 1-7, 9, 10, 12, 14, 38 and 40-62 are examined.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7, 9-10, 12, 14, 38, 40-62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites "a mortality rate of at least 99%", then in the next line states "the surviving cells are isolated". Since "at least 99%" can read on 100%, it is unclear how there could be surviving cells if the mortality rate is 100%.

Claim 1 recites the limitation "the surviving cells" in line 13. There is insufficient antecedent basis for this limitation in the claim.

The terms "bad smell" and "bad or abnormal taste" in claims 2 and 57 are relative terms which render the claim indefinite. The terms "bad smell" and "bad or abnormal taste" are not defined by the claim, the specification does not provide a standard for

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ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

It appears claim 57 depended on claim 1, however, the dependency is in question because the "1" is now in brackets. It is unclear whether claim 57 still depends from claim 1.

Attfield (Nature Biotech. 15: 1351-1357, 1997) discusses the optimal conditions for baker's yeast. The yeast should be processed at room temperature, with fermentable sugars in abundance, a pH of 5, etc.. If optimal conditions do not exist, a stress response is induced in the yeast. However, yeast need to endure stress to be more commercially viable. Therefore, Attfield teaches certain conditions for the yeast that can improve the response to stress. For example, increased trehalose concentration will increase the robustness of the yeast. Manipulating the growth rate, adding osmolytes and shifting temperatures will ensure high levels of protectants like trehalose. While Attfield teaches general methods of improving the performance of baker's yeast, he does not teach the process for obtaining yeast strains conserving stress resistance as outlined in the current application. Therefore, there are no art rejections.

Allowable Subject Matter


No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele K. Joike, Ph.D. whose telephone number is 571-272-5915. The examiner can normally be reached on M-F, 9:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Irem Yucel, Ph.D. can be reached on 571-272-0781. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michele K Joike, Ph.D.
Examiner
Art Unit 1636


DAVID GUZO
PRIMARY EXAMINER